REMARKS/ARGUMENTS

Claims 1-18 stand in the present application. Claims 1 and 10 having been amended. Reconsideration and favorable action is respectfully requested in view of the above amendment and following remarks.

In the Office Action, the Examiner has continued to reject claims 1-18 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner's rejection of the claims is simply not understood. In the last response, Applicants pointed out that the Examiner's cited portion of the MPEP does not support this rejection. Tellingly, the Examiner has not in any way responded to Applicants' arguments other than to simply parrot the very same rejection. Although Applicants strongly believe that these claims comply with 35 U.S.C. §112 to expeditiously forward the prosecution of this case, Applicants have amended independent claims 1 and 10 to obviate the objected to language. In view of these amendments, it is respectfully submitted that the claims clearly overcome the Examiner's §112 rejection.

The Examiner has also rejected claims 1-18 under 35 U.S.C. §103(a) as being unpatentable over Mighdoll et al. ("Mighdoll") in view of Kaplan et al. ("Kaplan"). Applicants respectfully traverse the Examiner's §103(a) rejection of the claims.

The Examiner apparently admits that Mighdoll doesn't disclose a system having "*means for instructing . . . .*" as required by the present claims. *See,* Office Action at

pages 10-11. For independent claim steps (i) to (v), the Examiner relies on Kaplan, but it is respectfully submitted that Kaplan performs these steps for the purpose of determining which of a plurality of telecommunications paths should be utilized for transferring a data file from a first memory to a remote destination which is a very different purpose that is not equivalent to the purpose for which the steps are performed in Applicants' invention. In Applicants' invention, each of a plurality of data providers is instructed to perform steps (i) to (v) for the purpose of enabling one of the plurality of data providers to be selected as a preferred data provider. This is not true of the system in Kaplan, in which a comparison is instead being made of a plurality of different paths from the same server.

As noted above, Applicants have amended independent claims 1 and 10 to emphasize this distinction. Specifically, the penultimate limitations in the independent claims have been amended to emphasize that the selection of the preferred provider is made from the plurality of data providers based on the signals, which signals are generated from the data providers performing steps (i) to ((v). Since neither Mighdoll nor Kaplan teach or suggest having data providers perform these steps in order to select a preferred data provider, the present claims patentably define over the cited art taken singly or in combination.

The Examiner's rejection also appears to rely, however, on Mighdoll disclosing a system for selecting a preferred data provider for a user from a plurality of data providers without the user needing to install or execute specific software on his or her own

machine. The Examiner asserts that this teaching can be found in Mighdoll at column 8, lines 4-14. See, Office Action at page 5. In fact, this cited excerpt from Mighdoll relates to the downloading of a file though a proxy. It is therefore not clear why the Examiner appears to believe it is relevant to the issue of selecting a preferred data provider from a plurality of data providers – there is no "selection" of a preferred data provider involved.

The Examiner justifies slotting steps (i) to (v) (as allegedly found in Kaplan) into the general system of Mighdoll by simply stating, in the usual manner, that these two prior art documents are "*from the same field of endeavour.*" *See,* Office Action at pages 10-11. Tellingly, Kaplan has no International or US Classification fields in common with Mighdoll and this is for a perfectly good reason. Mighdoll relates to a method of "accessing multiple services from multiple service providers," whereas Kaplan relates to "multi-protocol telecommunications optimization." *Compare,* Mighdoll and Kaplan titles, abstracts, etc. There is no reason given for regarding these two prior art documents as being "from the same field of endeavour," and no such reason is apparent to the Applicants.

However, even if it were justifiable to combine these two documents, slotting the steps from Kaplan into Mighdoll would not result in Applicants' invention, but would only realistically suggest to a skilled person that he should consider a change in the manner in which a packet is delivered from a Server/Proxy to a client, via a change of routing protocol. Accordingly, even the combined teachings would fall short of teaching

a system having features corresponding to those of the present claims that enable selection of a preferred server from a plurality of servers with the same content.

For all of these reasons, present claims 1-18 patentably define over the cited art taken singly or in combination.

Therefore, in view of the above amendments and remarks, it is respectfully requested that the application be reconsidered and that all of claims 1-18, standing in the application be allowed and that the case be passed to issue. If there are any other issues remaining which the Examiner believes can be resolved through either a Supplemental Response and Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the local telephone exchange indicated below.

Respectfully submitted,

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